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Attorneys for Mr. Marlon Spencer

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,	)	
	)	<b>Case No.: CR-09-0400 JW</b>
Plaintiff,	)	
	)	<b>STIPULATED REQUEST TO CONTINUE</b>
v.	)	<b>STATUS HEARING OR ANTICIPATED</b>
	)	<b>DEFENDANT'S PRETRIAL MOTIONS</b>
MARLON JERMAINE SPENCER,	)	<b>DATE TO OCTOBER 5, 2009 AND TO</b>
	)	<b>EXCLUDE TIME UNDER THE SPEEDY</b>
Defendant.	)	<b>TRIAL ACT</b>
	)	
	)	<b>Date: September 14, 2009</b>
	)	<b>Time: 1:30 p.m.</b>
	)	<b>Court: Hon. James Ware</b>
	)	

The above-captioned matter is currently set on September 14, 2009 before this Court for status hearing or anticipated defendant pretrial motions. The parties request that this Court continue the status conference to October 5, 2009 at 1:30 p.m. and that the Court continue to exclude time under the Speedy Trial Act between September 14, 2009 and October 5, 2009.

The United States has provided pretrial discovery including a search warrant and return issued and executed on May 8, 2007 of the defendant's home. The statement of probable cause in the aforementioned search warrant application was not provided by the Government and upon further inquiry by AUSA Shawna Yen, the Government is not currently in possession of said document. AUSA Shawna Yen contacted the District Attorney's office for the County of

1 Monterey in an effort to obtain and provide the statement of probable cause. As of this date, the  
2 district attorney's office has not responded to AUSA Shawna Yen's request. The clerk of the  
3 Monterey County Superior Court informed defense counsel that they maintain possession of the  
4 entire search warrant application including the statement of probable cause. The clerk of the  
5 court informed my office that the order would be ready for pick up within approximately seven  
6 days of receipt.

7 On August 27, 2009 defense counsel Ariel Boyce-Smith faxed a request form to the  
8 Monterey County Superior Court ordering a copy of the search warrant application including the  
9 statement of probable cause. Defense counsel Ariel Boyce-Smith conferred with AUSA Shawna  
10 Yen and informed her that the search warrant application, including the statement of probable  
11 cause, has been ordered directly from the Monterey County Superior Court and that it would take  
12 approximately seven days to process the request.

13 Defendant intends to file a motion to suppress in this matter and an integral part of that  
14 motion requires a review of the entire search warrant application and statement of probable  
15 cause. Accordingly, the Defendant needs additional time to effectively prepare the papers and  
16 filings on the motion to suppress. For those reasons, the parties stipulate and request that the  
17 Court continue the hearing and exclude time between September 14, 2009 and October 5, 2009  
18 under the Speedy Trial Act for reasonable time necessary for counsel to effectively prepare,  
19 pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv). The parties jointly agree that the ends of justice  
20 served by granting the continuance outweigh the best interests of the public and the defendant in  
21 a speedy trial.

22  
23 Dated August 28, 2009

24  
25 /s/Ariel Boyce-Smith

26 Ariel Boyce-Smith  
27 Attorney for Defendant

/s/ Shawna Yen

Shawna Yen  
Assistant United States Attorney

1 I hereby attest that I have authorization to file this document on behalf of those  
2 individuals whose signatures are indicated by a “conformed” signature (/S/) within this e-filed  
3 document.  
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UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
MARLON JERMAINE SPENCER,  
  
Defendant.

)  
) **Case No.: CR-09-0400 JW**  
)  
) **[PROPOSED] ORDER GRANTING**  
) **STIPULATED REQUEST TO CONTINUE**  
) **STATUS HEARING OR ANTICIPATED**  
) **DEFENDANT'S PRETRIAL MOTIONS**  
) **AND TO EXCLUDE TIME UNDER THE**  
) **SPEEDY TRIAL ACT**  
)  
) **Date: September 14, 2009**  
) **Time: 1:30 p.m.**  
) **Court: Hon. James Ware**

The parties jointly requested that the status hearing or anticipated defendant pretrial motions in this matter be continued from September 14, 2009 to October 5, 2009 and that time between September 14, 2009 to October 5, 2009 be excluded under the Speedy Trial Act to allow for the effective preparation of counsel for the reasons set forth in the parties' stipulated request. For the reasons stated, the Court finds that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial. Good cause appearing therefore, and pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv),

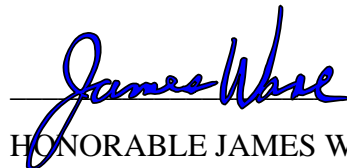
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1           **IT IS HEREBY ORDERED** that this matter is set for status hearing or anticipated  
2 defendant's pretrial motions on September 14, 2009 at 1:30 p.m. and that time between  
3 September 14, 2009 to October 5, 2009 will continue to be excluded under the Speedy Trial Act  
4 to allow for the effective preparation of counsel, taking into account the exercise of due  
5 diligence.

6 Any anticipated motions shall be noticed in accordance with the Criminal Local and Federal  
7 Rules of Procedure.

8 DATED: August 31, 2009



HONORABLE JAMES WARE

United States District Court Judge